

OBJECTIVE 1.1 Identify statutory law, case law, agency policy, and principles of liability governing non-emergency driving.

Non-Emergency Driving Under State Law

INTRODUCTION

All traffic laws that govern the general public apply with equal force to on-duty law enforcement officers in non-emergency driving. Non-emergency driving is all law enforcement driving that does not meet the requirements of state emergency exemption statutes. Officers involved in collisions during non-emergency driving may be liable for damages under negligence tort law. Officers involved in collisions during non-emergency driving may claim immunity from liability under state governmental immunity statutes but this governmental immunity has been restricted or even abolished in many states. Violation of agency policy regarding non-emergency and emergency driving may provide evidence of negligence. However, adherence to agency policy that contradicts state law does not excuse negligence.

NON-EMERGENCY DRIVING

Non-emergency driving is all law enforcement driving that does not comply with the provisions of state emergency exemption statutes. Typical state emergency exemption statutes have two primary requirements: (1) warning lights and/or a siren must be activated; and (2) the officer must be engaged in enforcing the law. If warning devices are not activated, or if the officer is not enforcing the law, the emergency exemption statute does not protect the officer. Cases addressing whether a particular state emergency exemption statute applies are discussed in Objective 1.2.

Negligence is the failure to use reasonable care. Drivers who are negligent and cause an injury to another may be required to pay money damages to the injured person which is commonly referred to as civil liability. The branch of law that deals with civil liability is called tort law. Officers involved in collisions during non-emergency driving may be responsible for damages under negligence tort law.

GOVERNMENTAL IMMUNITY

Many states give limited immunity to governmental units and governmental employees against negligence lawsuits arising out of governmental activities. Governmental immunity means a lawsuit for money damages will not be allowed even though the governmental employee is admittedly negligent. Governmental immunity, however, has been severely restricted in many states and substantially abolished in others. Some states, such as Illinois, grant immunity for negligence, but not for "willful and wanton" or "outrageous" misconduct. Other states, such as Colorado and Ohio, specifically allow negligence claims against a city or county if the negligence involved operation of a motor vehicle under non-emergency conditions. This type of exception to governmental immunity is often called the "motor vehicle exception."

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The specific language of the state governmental immunity statute is critical to the determination of whether an officer is entitled to immunity from negligent driving claims. For some states such as Indiana and Illinois, the issue of whether an officer is entitled to governmental immunity against negligent driving claims turns on whether the officer was engaged in “executing and enforcing the law” at the time of the collision. In other states such as Texas and Virginia, the issue of whether an officer is entitled to governmental immunity against negligent driving claims turns on whether the activity engaged in at the time of the collision is “ministerial” or “discretionary” in nature. In general, officers engaged in routine elements of their official duties will not be immunized from negligent driving claims. The following five cases illustrate this point.

ROUTINE PATROL

Case One: Inattentive Officer On Traffic Patrol

CITY OF WAKARUSA v. HOLDEMAN, 582 N.E.2d 802 (Ind. 1991).

A police officer was checking for invalid registration tags in an area where he recently cited a number of motorists for invalid registration. As he drove along a city street at 35 mph, the officer looked in his outside driver's side mirror to check on cars as they passed in the opposite direction. The officer did not notice that traffic in his travel lane had stopped until it was too late. He hit the rear of the car ahead of him.

The driver of the damaged car brought a civil lawsuit against the officer and the city that employed him. The lawsuit alleged negligence - failure to use reasonable care under the circumstances. Under a rule of tort law called vicarious liability, employers are liable for the actions of their employees if their employees were negligent and caused the injury while working within the course and scope of employment. Accordingly, both the city and the officer could be found liable if it was determined that the officer failed to use reasonable care while on patrol.

The Supreme Court of Indiana said:

"It is undisputed that a person operating a motor vehicle on a public roadway has a duty to operate such vehicle with reasonable care. A question of fact exists as to whether or not [the officer] exercised such care under the circumstances."

The Supreme Court of Indiana rejected the officer's argument that he was immune from a negligence lawsuit because he was on-duty and engaged in the enforcement of the criminal law at the time of the collision. The court held that the Indiana immunity statute is restricted to arrest activities and does not provide protection for general law enforcement activities like traffic patrol. The immunity statute does not eliminate liability for "willful and wanton" negligence.

See also *Leaks v. City of Chicago*, 238 Ill. App. 3d 12, 606 N.E.2d 156 (Ill. App. Ct. 1992) (holding that immunity does not attach where officer is engaged in routine patrol duty); *Stuart v. Brookline*, 412 Mass. 251, 587 N.E.2d 1384 (Mass. 1992) (holding that an officer must exercise reasonable care in operating vehicle in course of traffic enforcement duties).

Case Two: Officer Negligent In Transporting Prisoner

AIKENS v. MORRIS, 145 Ill.2d 273, 583 N.E.2d 487 (Ill. 1991).

A city officer in Illinois was transporting a prisoner from a neighboring town to a detention facility in his city. The officer was not in a hurry and was not using warning lights or sirens. The officer's car collided at an intersection with another vehicle. The driver of that vehicle later filed a negligence lawsuit against the officer and the city.

The officer claimed he was protected from civil liability under the terms of the Illinois immunity statute for governmental activity. The officer argued that transporting a prisoner was an essential part of law enforcement activity and should be covered by governmental immunity.

The Illinois Supreme Court rejected the officer's claim of immunity. The court noted that the officer was not in an emergency since he had not activated his warning lights or siren. The officer testified that he was in "no hurry."

The court ruled that the Illinois immunity statute does not protect officers from negligent driving while transporting a prisoner. The statute prevents negligence liability only for conduct in the execution or enforcement of the law, which does not include transporting prisoners.

Case Three: Officer Negligent In Leading Funeral Procession

VALPRAISO v. EDGECOMB, 587 N.E.2d 96 (Ind. 1992).

At the instruction of his lieutenant, a city officer in Indiana was proceeding to the front of a funeral procession when he collided with a car that was turning right onto the road. The driver of that car filed a complaint seeking recovery for injuries and damages. The officer claimed he was protected from liability under Section 3(7) of the Indiana Tort Claim Act which immunizes governmental entities and employees against losses resulting from enforcement of a law.

The Supreme Court of Indiana held that there is no immunity under Section 3(7) unless the plaintiff seeks recovery for injuries arising out of police activities attendant to effecting an arrest. Since the parties did not dispute that the officer was not involved in effecting an arrest, immunity did not protect the city and the officer, and there remained a question of fact as to whether the officer exercised due care under the circumstances.

See also *Bell v. Boklund*, 712 P.2d 1126 (Colo. Ct. App. 1985) (holding that officer leading funeral procession is not exempted from obeying municipal traffic regulations). In contrast, the Nevada emergency exemption statute specifically grants vehicles escorting funerals the same privileges afforded authorized emergency vehicles. See also Fla. Stat. ch. 316.072(5)(a)(3) (allows "driver of an authorized law enforcement vehicle, when conducting a non-emergency escort, to warn the public of an approaching motorcade" to exercise privileges of emergency vehicles). Therefore, it is important that those involved in law enforcement driving consult their particular state emergency exemption statute as well as the relevant state governmental immunity provisions. See Objective 1-2 for a detailed discussion of state emergency exemption statutes.

Case Four: Negligent Officer On County Business

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WOODS v. MOODY, 933 S.W.2d 306 (Tex. Ct. App. 1996).

While driving on-duty, a county officer worried that a clipboard on the car's floorboard would become dangerously lodged under the brake. When the officer reached to pick up the clipboard, his foot slipped off the brake and he struck the car ahead of him.

The driver of that car sued for negligence, and the county, the sheriff's department, and the officer all claimed governmental immunity.

Under Texas law, government employees are entitled to official immunity from suit arising from the good faith performance of discretionary duties when they act within the scope of their authority. An action is discretionary if it involves personal deliberation, decision and judgment. The driver argued that the officer's actions were ministerial rather than discretionary.

The Texas Court of Appeals said:

"Unlike high speed chases or traffic stops, operating a car in a non-emergency situation does not involve personal deliberation or the exercise of professional expertise, decision, or judgment...Thus, absent special circumstances that suggest the officer was performing a discretionary function, such as engaging in a high speed chase, we hold that an officer driving a motor vehicle while on official, non-emergency business is performing a ministerial act."

Case Five: Officer Negligent While Serving Judicial Process

HEIDER v. CLEMONS, 241 Va. 143, 400 S.E.2d 190 (Va. 1991).

A deputy sheriff served process at a residence and returned to his car which was parked on the shoulder of the road. As he pulled out, his car collided with a motorcycle traveling in the same direction. The driver of the motorcycle filed a negligence suit against the deputy sheriff; the deputy sheriff asserted the defense of sovereign immunity.

The Supreme Court of Virginia held that the deputy sheriff was not entitled to immunity:

"While every person driving a car must make myriad decisions, in ordinary driving situations the duty of care is a ministerial obligation. The defense of sovereign immunity applies only to acts of judgment and discretion which are necessary to the performance of the governmental function itself. In some instances, the operation of an automobile may fall into this category, such as the discretionary judgment involved in vehicular pursuit by a law enforcement officer...However, under the circumstances of this case, the simple operation of

an automobile did not involve special risks arising from the governmental activity, or the exercise of judgment or discretion about the proper means of effectuating the governmental purpose of the driver's employer."

CALLS TO INVESTIGATE OR ASSIST

When an officer is responding to a call to investigate or assist, however, it is less predictable whether an officer will be entitled to governmental immunity or not. A Kentucky court of appeals held that immunity does not attach to an officer negligent in responding to a burglary.

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Similarly, a Connecticut court held that an officer on his way to investigate a discharge of fireworks was not entitled to immunity, and a Missouri court of appeals held that immunity does not attach to an officer responding to a call to assist another officer. In contrast, an Illinois court of appeals granted immunity to an officer responding to a call of shots fired, and a Virginia circuit court held that an officer going to assist another officer in a vehicular stop was entitled to immunity. Case summaries of these five decisions appear below.

Case Six: Officer Negligent In Responding To Burglary

SPECK v. BOWLING, 892 S.W.2d 309 (Ky. Ct. App. 1995).

While driving to the scene of a burglary, a state trooper crossed the center line of the highway and collided with an oncoming vehicle. The state trooper had his blue lights on but not the siren. The driver of the vehicle and his granddaughter were injured as a result of the collision and sued for negligence. In an appeal from a judgment for the driver, the state trooper argued that his actions in responding to a burglary were discretionary in nature.

The Kentucky Court of Appeals, however, disagreed and stated:

“[W]e disagree that an officer is free to operate his vehicle negligently or to put others on the roadways in danger in carrying out those duties...we hold Speck’s actions were ministerial and that, as he was not engaged in a discretionary governmental function at the time he collided with the appellee, he is not entitled to assert a qualified immunity.”

Case Seven: Officer Negligent In Investigating Discharge of Fireworks

MACMILLEN v. TOWN OF BRANFORD, 1998 Conn. Super. LEXIS 889 (Conn. Super. Ct. 1998).

On his way to investigating a discharge of fireworks, an officer took his eyes off the road when he heard another explosion of fireworks. The officer then struck plaintiff’s car in the rear. Plaintiff sued the town and the officer for negligence. The officer conceded negligence but asserted the defense of governmental immunity. The officer argued that his “operation of his cruiser was a discretionary act because he was investigating a crime...at the time and because his attention was diverted by yet another crime...when the accident happened.”

The Connecticut Superior Court disagreed. The court deemed the officer’s operation of the cruiser to be ministerial and not subject to immunity. The court stated:

“Of course the decision as to which crime scene to investigate is a discretionary act. If the claim against [the officer] was that he had negligently selected the crime scene that he was investigating the defendants would have a compelling defense of governmental immunity. But the act of driving to a crime scene is different.”

Case Eight: No Immunity For Officer Responding to Call to Assist

BROWN v. TATE, 888 S.W.2d 413 (Mo. Ct. App. 1994).

While responding to a call to assist, an officer entered an intersection with a flashing yellow light. The officer's paddy wagon collided with a truck that entered the intersection against a red flashing light. The driver of the truck died in the collision. The driver's parents and child brought suit against the officer and the police department.

The officer admitted that she was not on an emergency run, but she argued that she was nonetheless entitled to governmental immunity. The Missouri Court of Appeals disagreed and stated:

"The doctrine of official immunity shields a police officer from liability for negligence in the performance of his discretionary, as opposed to ministerial, duties... We hold that a police officer, driving on the public streets and highways, in a non-emergency situation, has no blanket immunity from liability for negligence in the operation of his car. His driving does not 'involve policymaking or the exercise of professional expertise and judgment.'"

Case Nine: Officer Responding To Call Of Shots Fired Entitled To Immunity

BRUECKES v. COUNTY OF LAKE, 276 Ill. App. 3d 567, 658 N.E.2d 538 (Ill. App. Ct. 1995), *appeal denied*, 166 Ill.2d 536, 664 N.E.2d 639 (Ill. 1996).

Near the end of his shift, an officer heard over the radio a report of shots fired in the Diamond Lake area. Although three other deputies were dispatched to the area, the officer stated that he would respond. The officer was on his way to the scene when his police car hit a pedestrian crossing the road. The officer was not using his siren or flashing lights, and he did not consider the situation an "emergency."

The pedestrian sued the county and the officer for negligence. The county and the officer argued that they were immune from liability because the officer was executing or enforcing a law at the time of the collision.

The Illinois Court of Appeals agreed and stated:

"In the present case, [the officer] was responding to a call of shots fired. He clearly was being called upon to execute or enforce a law. The facts that he was not specifically dispatched to the scene, did not have his emergency lights and siren activated, and did not subjectively consider the situation to be an emergency do not alter this conclusion. The cases in which immunity has been found applicable do not require that the officer be engaged in an emergency response."

But see *Sanders v. City of Chicago*, 306 Ill. App. 3d 356, 714 N.E.2d 547 (Ill. App. Ct. 1999) (holding that immunity does not attach where officer was responding to emergency that had already

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passed).

Case Ten: Officer Called To Assist Entitled To Immunity

SMITH v. DANIEL, 47 Va. Cir. 541 (Va. Cir. Ct. 1999).

While a deputy sheriff was on duty, a call came over his patrol car radio that another deputy had stopped a vehicle and “believed that a weapon was involved and had several suspects and needed some assistance.” After receiving the call, the deputy sheriff got in his car and proceeded to drive to the other deputy’s location. On the way, he collided with another car. The driver of that car sued for negligence, and the deputy sheriff asserted the defense of sovereign immunity.

The Virginia Circuit Court granted immunity and stated:

“In the case at bar, defendant was unquestionably performing a governmental function at the time of the collision: going to assist another sheriff’s deputy in a vehicular stop. He had even been told that a gun might be involved...At the least, the present defendant had to decide how quickly he had to get to the other deputy’s location, what route to take, what action was needed to protect the public, whether to alert the occupants of the stopped vehicle of his approach by employing his flashing lights and siren, whether to call for additional backup, whether to have his weapon in hand, and so on.”

See also *Gilbert v. Richardson*, 264 Ga. 744, 452 S.E.2d 476 (Ga. 1994) (holding that police officer rushing to back-up another officer in response to emergency call was performing discretionary function and entitled to immunity).

EXCEPTIONS TO EXCEPTIONS TO IMMUNITY

Several states that provide motor vehicle exceptions to governmental immunity also provide specific exceptions to these exceptions. Pennsylvania, for example, provides a “flight” exception to the motor vehicle exception that immunizes a local agency from liability to a plaintiff who was injured while in flight or fleeing apprehension or resisting arrest by a police officer. See 42 Pa. C.S. §8542(b)(1). See *Forgione v. Heck*, 736 A.2d 759 (Pa. Commw. Ct. 1999), *appeal denied*, 1999 Pa. LEXIS 3705 (Pa. 1999) (holding that officer whose car struck fleeing offender was entitled to immunity).

Ohio provides an “emergency call” exception to the motor vehicle exception to governmental immunity. This exception somewhat resembles the emergency exemption statutes discussed in the next section, Objective 1.2. However, as the following case demonstrates, Ohio courts have typically interpreted this exception as not requiring the use of lights and sirens.

Case Eleven: Officer Called To Scene of Burglary Entitled To Immunity

MOORE v. CITY OF COLUMBUS, 98 Ohio App. 3d 701, 649 N.E.2d 850 (Ohio Ct. App. 1994), *discretionary appeal*

not allowed, 72 Ohio St. 3d 1422, 648 N.E.2d 514 (Ohio 1995).

An officer on routine patrol received a dispatch to report to the scene of a burglary at a local high school. On the way, the officer collided with another vehicle at an intersection. The officer was traveling approximately 40 mph, five miles over the posted speed limit. The officer was not operating the cruiser's emergency flashers or siren but he considered himself to be on an emergency call.

The occupants of the other vehicle sued the officer and the city. The officer and the city claimed immunity under the "emergency call" exception to the "motor vehicle" exception to the Ohio governmental immunity statute. The plaintiffs argued that the "emergency call" exception applies only to "inherently dangerous situations."

The Ohio Court of Appeals granted immunity and stated that there "is no requirement in the statute which would limit the 'emergency call' exception only to those occasions where there is an inherently dangerous situation or when human life is at danger." Regarding the plaintiff's argument that the officer's failure to use lights and sirens rendered the call a non-emergency, the court stated:

"R.C. 2744.02 simply does not require that the police officers operate their sirens or overhead lights in order to be deemed to be responding to an 'emergency call,' for purposes of invoking immunity from liability."

SUMMARY

Law enforcement officers engaged in non-emergency driving must comply with the traffic laws that govern the general public. Non-emergency driving includes all law enforcement driving that does not meet the requirements of state emergency exemption statutes. Officers involved in collisions during non-emergency driving may be liable for damages under negligence tort law. Governmental immunity rarely shields officers from such liability.

SUGGESTED INSTRUCTIONAL METHODOLOGY

LECTURE WITH SLIDES

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

LECTURE AND CLASS DISCUSSION

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.

SMALL GROUPS WITH CASE STUDIES

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

RESOURCES AND AIDS

1. Relevant state statutes.
2. Agency policies.

SUGGESTED EVALUATION METHODOLOGY

STUDENTS

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Legal Aspects of Law Enforcement Driving

1. Written or verbal response to questions regarding legal principles.
2. Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios.

COURSE

1. Observe the driving of officers during the simulations of non-emergency and emergency vehicle operations.
2. Review agency collision reports for failure to heed legal considerations.